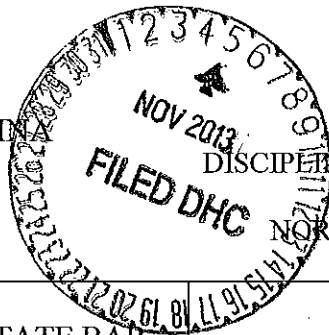


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 27

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ALLAN C. De LAINE, Attorney,

Defendant

AMENDED COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Allan C. De Laine ("De Laine" or "Defendant"), was admitted to the North Carolina State Bar on April 11, 1997, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all of the relevant periods referred to herein, De Laine was engaged in the practice of law in the State of North Carolina and maintained a law office in Clayton, Johnston County, North Carolina.

FIRST CLAIM FOR RELIEF

4. On or about April 16, 2008, Marilyn A. Fisher ("Ms. Fisher") was injured while she was a guest in the home of an acquaintance's daughter ("G. Jackson") located in Gladys, Campbell County, Virginia.

5. In August 2008, Ms. Fisher retained De Laine to represent her in a personal injury action for the injuries she sustained.

6. Ms. Fisher and De Laine agreed that De Laine would receive a 33⅓% contingency fee of any proceeds awarded to Ms. Fisher.

7. De Laine failed to reduce his contingency fee agreement with Ms. Fisher to writing.

8. After being retained by Ms. Fisher, De Laine failed to respond to Ms. Fisher's telephone and e-mail requests for updates on the status of her case.

9. De Laine neglected Ms. Fisher's case and failed to pursue settlement negotiations with G. Jackson's insurance company.

10. De Laine failed to consult with Ms. Fisher and failed to keep Ms. Fisher informed about the status of her case.

11. De Laine failed to explain to Ms. Fisher the steps he was taking on her behalf, or obtain Ms. Fisher's informed consent for his actions in the case.

12. De Laine knew, or should have known, that Ms. Fisher's personal injury action against G. Jackson would need to be filed in Campbell County, Virginia, not in one of North Carolina's counties, in order for the court to obtain personal jurisdiction over G. Jackson.

13. De Laine knew, or should have known, that under Virginia law G. Jackson's husband was a necessary party defendant to the personal injury action that De Laine contemplated filing on behalf of Ms. Fisher against G. Jackson.

14. De Laine knew, or should have known, that Virginia has a two-year statute of limitations for personal injury actions.

15. De Laine knew, or should have known, that under Virginia law G. Jackson and her husband, as homeowners, only had a duty to use ordinary care not to expose a guest like Ms. Fisher to danger.

16. To the extent that De Laine did not know or research the legal issues referenced in Paragraphs 12-16 above, he failed to exercise competence and reasonable diligence in representing Ms. Fisher.

17. The Virginia statute of limitations for Ms. Fisher's action against G. Jackson expired on April 8, 2010.

18. De Laine did not file, or cause to be filed through a licensed Virginia attorney, the personal injury action on behalf of Ms. Fisher against G. Jackson in Campbell County, Virginia, or in any other Virginia venue.

19. De Laine mistakenly believed he could file Ms. Fisher's personal injury action against G. Jackson in the Johnston County District Court.

20. De Laine mistakenly believed North Carolina's three-year statute of limitations for personal injury actions was applicable to Ms. Fisher's claim against G. Jackson.

21. On April 15, 2011, the day before the expiration of North Carolina's three-year statute of limitations, De Laine filed a complaint on behalf of Ms. Fisher against G. Jackson in Johnston County District Court.

22. De Laine filed the complaint referenced in Paragraph 21 above with the intent to take a voluntary dismissal and thereby obtain an additional year to pursue settlement negotiations in Ms. Fisher's case.

23. The complaint referenced in Paragraph 21 above contained a notarized verification that purported to be signed by Ms. Fisher on April 15, 2011.

24. Ms. Fisher did not sign the verification referenced in Paragraph 23 above, and did not authorize anyone, including De Laine, to sign her name to the verification.

25. Without Ms. Fisher's knowledge or authorization, De Laine signed Ms. Fisher's name to the verification referenced in Paragraph 23 above.

26. After signing Ms. Fisher's name to the verification referenced in Paragraphs 23 and 25 above, De Laine presented the falsified verification to a notary public ("R. Wooten"), and requested that she notarize Ms. Fisher's purported signature on the verification.

27. At De Laine's request, R. Wooten notarized the purported signature of Ms. Fisher on the verification referenced in Paragraph 23 above even though Ms. Fisher had not signed the verification in her presence.

28. By presenting Ms. Fisher's false signature to R. Wooten for notarization, De Laine caused R. Wooten to commit a misdemeanor in violation of N.C. Gen. Stat. § 10B-60(c).

29. On May 23, 2011, without notice to Ms. Fisher or her consent, De Laine filed a notice of dismissal of the complaint referenced in Paragraph 21 above.

30. De Laine did not inform Ms. Fisher about the dismissal referenced in Paragraph 29 above.

31. De Laine failed to re-file the complaint against G. Jackson within one year of the May 23, 2011 dismissal referenced in Paragraph 29 above.

32. De Laine ceased representing Ms. Fisher without informing her that he was no longer acting as her attorney and without obtaining permission of the court to withdraw from her case.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to reduce his contingency fee agreement with Ms. Fisher to writing, Defendant violated Rule 1.5(c) requiring that a contingent fee agreement be in writing signed by the client and that the agreement state the method by which the fee is to be determined;
- b) By neglecting Ms. Fisher's case, failing to pursue settlement negotiations with G. Jackson's insurance company, failing to research applicable Virginia law, and failing to timely file or cause to be filed Ms. Fisher's complaint against G. Jackson, Defendant failed to competently represent Ms. Fisher in violation of Rule 1.1, Defendant failed to act with reasonable diligence and promptness in representing Ms. Fisher in violation of Rule 1.3, and Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- c) By failing to respond to Ms. Fisher's requests for status updates, failing to consult with Ms. Fisher, and failing to explain the effect of the dismissal of her complaint to Ms. Fisher, Defendant failed to reasonably consult with Ms. Fisher about the means by which her objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep Ms. Fisher reasonably informed about the status of her case in violation of Rule 1.4(a)(3), failed to promptly comply with Ms. Fisher's reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to the extent necessary to permit Ms. Fisher to make informed decisions about her case in violation of Rule 1.4(b);
- d) By knowingly forging Ms. Fisher's signature on the complaint verification, causing the notary public to notarize the falsified signature, and filing the complaint containing the notarized falsified signature, Defendant made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1), falsified evidence in violation of Rule 3.4(b), knowingly assisted or induced another to violate or attempt to violate the Rules of Professional Conduct in violation of Rule 8.4(a), committed criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- e) By filing the dismissal of the complaint without Ms. Fisher's knowledge or consent, Defendant failed to consult with Ms. Fisher as to the means by which the objectives of her representation were to be pursued in violation of Rule 1.2(a); and,
- f) By failing to obtain the permission of the court to withdraw from Ms. Fisher's case, Defendant failed to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation in violation of Rule 1.16(c), and by not informing Ms. Fisher that he would

no longer be representing her, Defendant failed to protect his client's interest by giving reasonable notice of his termination of her representation in violation of Rule 1.16(d).

SECOND CLAIM FOR RELIEF

33. On August 13, 2005, Delphine D. Wilder ("Ms. Wilder") was injured in Cary, North Carolina, when her vehicle was rear-ended by another vehicle driven by G. Sholar ("G. Sholar").

34. In January 2008, Ms. Wilder retained De Laine to represent her in a personal injury action against G. Sholar.

35. Ms. Wilder and De Laine agreed that De Laine would receive a contingency fee of any proceeds awarded to Ms. Wilder.

36. De Laine failed to reduce his contingency fee agreement with Ms. Wilder to writing.

37. After conferring with Ms. Wilder, on or about July 1, 2008 De Laine notified G. Sholar's insurance company that Ms. Wilder rejected their settlement offer.

38. On August 13, 2008, the day of the expiration of the statute of limitations, De Laine filed a complaint on behalf of Ms. Wilder against G. Sholar in Johnston County District Court.

39. The Sheriff's Department was unable to serve G. Sholar with Ms. Wilder's summons and complaint, and returned notice to De Laine of lack of service on or about October 10, 2008.

40. De Laine took no action on Ms. Wilder's case after the return of service referenced in Paragraph 39 above.

41. De Laine did not inform Ms. Wilder about the inability to obtain service upon G. Sholar of the summons and complaint referenced in Paragraphs 38 and 39 above.

42. De Laine did not inform Ms. Wilder of her options if the Sheriff's Department was unable to obtain service upon G. Sholar of the summons and complaint referenced in Paragraphs 38 and 39 above.

43. De Laine failed to keep alive the summons referenced in Paragraph 39 above in order to prevent Ms. Wilder's lawsuit against G. Sholar from becoming time-barred under the statute of limitations.

44. Because of De Laine's inaction referenced in Paragraph 43 above, Ms. Wilder's cause of action against G. Scholar is now time-barred.

45. After failing to obtain service of the summons and complaint upon G. Sholar as referenced in Paragraphs 38 and 39 above, De Laine failed to respond to Ms. Wilder's telephone calls and messages inquiring about the status of her case.

46. De Laine ceased representing Ms. Wilder without informing her that he was no longer acting as her attorney and without obtaining permission of the court to withdraw from her case.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to reduce his contingency fee agreement with Ms. Wilder to writing, Defendant violated Rule 1.5(c) requiring that a contingent fee agreement be in writing signed by the client and that the agreement state the method by which the fee is to be determined;
- b) By neglecting Ms. Wilder's case and failing to keep alive the summons to prevent Ms. Wilder's lawsuit against G. Sholar from becoming time-barred under the statute of limitations, Defendant failed to act with reasonable diligence and promptness in representing Ms. Wilder in violation of Rule 1.3, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- c) By failing to consult with Ms. Wilder about the inability to obtain service upon G. Sholar and failing to respond to Ms. Wilder's telephone calls and messages inquiring about the status of her case, Defendant failed to reasonably consult with Ms. Wilder about the means by which her objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep Ms. Wilder reasonably informed about the status of her case in violation of Rule 1.4(a)(3), failed to promptly comply with Ms. Wilder's reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to Ms. Wilder to the extent necessary to permit Ms. Wilder to make informed decisions about her case in violation of Rule 1.4(b); and,
- d) By failing to obtain the permission of the court to withdraw from Ms. Wilder's case, Defendant failed to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation in violation of Rule 1.16(c), and by not informing Ms. Wilder that he would no longer be representing her, Defendant failed to protect his client's interest by giving reasonable notice of his termination of her representation in violation of Rule 1.16(d).

WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

The 6th day of November, 2013.



Margaret M. Hunt, Chair
Grievance Committee



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